Public Prosecutor v Salwani Thaleb

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05–11 OF 2008
GOPAL SRI RAM, HASAN LAH AND VINCENT NG JJCA
21 JULY 2008

Criminal Procedure — Sentence — Adequacy of sentence — Whether sentence manifestly inadequate — Whether appellate interference warranted

The respondent, upon his plea of guilt on charge under s 6 of the Dangerous Drugs Act 1952 ('DDA'), was convicted and sentenced to 11 years imprisonment and the mandatory 10 strokes of the rattan. This was the appeal by the prosecution against the inadequacy of the sentence. The quantity of drugs involved was 7,697g of cannabis and initially the appellant was charged together with another for trafficking under s 39B of the DDA. Subsequently, the prosecution tendered an alternative charge against both accused under s 6 for which the accused pleaded guilty.

Held, substituting sentence of 11 years imprisonment to 18 years imprisonment and affirming corporal punishment:

The court would only interfere if it could be satisfactorily demonstrated that the sentence was either illegal in that it was one not authorised by written law or alternatively that it was manifestly excessive or manifestly inadequate. On the facts, the sentence of 11 years passed by the High Court, even taking into account the very special circumstances of the case did not reflect the gravity of the offence. Nor did it appear to take into account public interest. The quantity of the drug here was extremely large. And that did not appear to have been taken into account either. Accordingly, the sentence was indeed manifestly inadequate warranting appellate interference (see paras 4 & 5).

[Bahasa Malaysia summary

Responden atas pengakuan bersalahnya atas pertuduhan di bawah s 6 Akta Dadah Berbahaya 1952 ('ADB'), disabitkan dan dihukum penjara 11 tahun dan 10 sebatan rotan mandatori. Ini adalah rayuan oleh pihak pendakwaan terhadap kekurangan hukuman. Kuantiti dadah yang terlibat adalah 7,697g kanabis dan pada awalnya perayu dituduh untuk pengedaran di bawah s 39B ADB. Kemudian, pihak pendakwaan mengemukakan pertuduhan alternatif

terhadap kedua-dua tertuduh di bawah s 6 di mana tertuduh mengaku bersalah.

Diputuskan, menggantikan hukuman 11 tahun penjara kepada 18 tahun dan mengesahkan hukuman sebat:

Mahkamah hanya akan campur tangan jika ia boleh dengan ditunjukkan secara yang memuaskan bahawa hukuman tersebut adalah sesuatu yang tidak sah di mana ia tidak diberi kuasa oleh undang-undang bertulis atau sebaliknya ia adalah jelas keterlaluan atau jelas tidak mencukupi. Di atas fakta, hukuman 11 tahun yang dikenakan oleh Mahkamah Tinggi, walau mengambil dalam pertimbangan hal keadaan istimewa kes tersebut tidak menunjukkan keseriusan kesalahan tersebut. Ia juga tidak mengambil dalam pertimbangan kepentingan awam. Kuantiti dadah di sini adalah amat besar. Dan ia juga kelihatan tidak di ambil perhatian. Oleh itu hukuman tersebut sememangnya tidak mencukupi yang mewajarkan campur tangan mahkamah rayuan (lihat perenggan 4 & 5).]

Notes

For cases on adequacy of sentence, see 5(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3290–3323.

Legislation referred to

Dangerous Drugs Act 1952 ss 6, 39A(2), 39B

Appeal from: Criminal Trial No 45–65 of 2002 (High Court, Kuala Lumpur)

Eddie Yeo (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Ahmad Zahid (Syed Hussein & Rakan-Rakan) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] This is the judgment of the court.

[2] The respondent before us was convicted on his plea of guilt on the charge under s 6 of the Dangerous Drugs Act 1952 punishable under s 39A(2) thereof. He was sentenced to 11 years imprisonment and the mandatory ten strokes of the rattan. The public prosecutor has appealed against the inadequacy of the sentence passed by the court below.

[3] The quantity of drugs involved is 7,697g of cannabis. The case for the prosecution at first instance was against both the appellant and one Shukri Mohd Noor based on a charge of trafficking under s 39B of the Act. However at the adjourned hearing of the case the prosecution tendered an alternative charge against both accused under s 6. It was in these circumstances that the respondent came to plead guilty. For completeness we would add that the first accused claimed trial to the alternative charge as well and we have been advised the case is still pending in the High Court.

[4] Now it is settled law that this court will not readily interfere with the measure of punishment imposed by the sentencing court. This is because the measure of the sentence that falls to be imposed in individual case turns on the facts of each case and involves to a large extent the discretion of the sentencing court. Hence this court will only interfere if it can be satisfactorily demonstrated that the sentence was either illegal in that it was one not authorised by written law or alternatively that it was manifestly excessive or manifestly inadequate.

[5] That brings us to the facts of this case. Applying established principles, the only issue to decide here is whether the sentence imposed by the High Court was manifestly inadequate. Now, in a number of cases similar in nature to the one now before us, we have consistently fixed the tariff of punishment at 18 years imprisonment. The sentence of 11 years passed by the High Court, even taking into account the very special circumstances of the present case does not reflect the gravity of the offence. Nor does it appear to take into account public interest. The quantity of the drug here was extremely large. And that does not appear to have been taken into account either. Accordingly, having given this matter our most anxious consideration, we are in agreement with the deputy public prosecutor that the sentence is indeed manifestly inadequate. It is therefore a case which calls for appellate interference.

[6] For the reasons already given we would set aside the sentence of 11 years imprisonment and substitute therefore a term of 18 years imprisonment from the date of the appellant's arrest. The sentence of corporal punishment is affirmed.

Sentence of 11 years imprisonment substituted with 18 years imprisonment and corporal punishment affirmed.

Reported by M Sivabarathi